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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Petition of US WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington, MSA	CC Docket No. 99-1 DA 99-104

REPLY COMMENTS of the GENERAL SERVICES ADMINISTRATION

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Table of Contents

Summary

In these Reply Comments, GSA responds to comments on the Petition by SBC Communications, Inc. ("SBC") asking the Commission to forbear from regulating the company as a "dominant" carrier in providing high capacity special access and dedicated transport services in the Seattle, Washington metropolitan statistical area. Specifically, GSA challenges assertions that U S West needs additional pricing flexibility for high capacity services.

In their comments, nearly all of the carrier parties explained that U S West understates the extent of its continuing market power. In its Petition, U S West asserted that it has a 20 percent market share of the "retail" market, with the remaining 80 percent provided by competitive carriers. However, the other commentors explain that the great majority of the market that U S West attributes to "competitors" consists of U S West circuits that end users have ordered from interexchange carriers, rather than directly from U S West. Using the best available data, one carrier party estimates that U S West still controls 80 percent of the market and its competitors 20 percent, rather than the reverse.

In view of these assessments, GSA urges the Commission to place little weight on claims that U S West needs additional pricing flexibility. U S West now has adequate means to respond to competition in Seattle. For example, the carrier may reduce charges for high capacity services in Seattle under the "density pricing zone" rules, and also offer term and volume discounts for special access services.

Although additional pricing flexibility is not necessary, GSA strongly endorses the company's' proposals concerning tariff filing regulations and rate averaging. Commenting parties did not focus on these aspects of the Petition, but these proposals are important because they will help U S West to participate in more competitive bidding opportunities.

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REPLY COMMENTS
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GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Public Notice ("Notice") released on January 4, 1999. The Notice invites comments and replies on a Petition by U S West Communications, Inc. ("U S West") asking the Commission to forbear from regulating the company as a "dominant" carrier in providing high capacity special access and dedicated transport services in the Seattle, Washington area. U S West states that its Petition satisfies the criteria for forbearance contained in Section 10 of the Telecommunications Act of 1996 because the company is "non–dominant" in offering these services in that region.[1]

I. INTRODUCTION

In its Petition, U S West asks the Commission to eliminate most regulatory surveillance of special access and dedicated transport services at DS–1 (1.544 Mbps) and DS–3 (45 Mbps) data speeds in the Seattle Metropolitan Statistical Area ("MSA").

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1 Notice, para. 1, citing Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

Specifically, U S West requests forbearance from five aspects of the Commission's surveillance:

- the rule that incumbent local exchange carriers ("LECs") file tariffs for interstate access services;
- requirements that dominant LECs must give 15 days notice of all tariff changes and include cost support with all tariff filings;
- the requirement that access charges must be averaged within a study area;
- the constraint that dominant carriers be subject to either price cap or rate of return regulation on all services; and
- any other rules that apply only to the company, and not to its competitors.[2]

GSA filed Comments addressing U S West's Petition on February 18, 1999. In its Comments, GSA urged the Commission to continue price cap regulation for these high capacity services. GSA explained that removing limits on the maximum charges for these services would eliminate protections that are still vital for end users and competitors.

A number of carrier parties also filed comments in response to the Commission's Notice: AT&T Corp. ("AT&T"); the Competitive Telecommunications Association ("CTA"); Network Access Solutions, Inc.; SBC Communications, Inc. on behalf of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell ("SBC"); Sprint Corporation ("Sprint"); Telecommunications Resellers Association ("TRA"); and MCI WorldCom, Inc. ("MCI WorldCom"). In these Reply Comments, GSA responds to the positions advanced by these parties.

2 Petition, p. 35.

II. THE COMMISSION SHOULD NOT HEED CLAIMS THAT U S WEST NEEDS MORE PRICING FLEXIBILITY IN SEATTLE.

A. Carrier parties report that U S West has understated its market power in the Seattle MSA.

Each of the carrier parties' comments, except those submitted by SBC, demonstrate that U S West understates its market power in providing special access services in the Seattle MSA.[3] Thus, these carrier parties concur with GSA that it is important to maintain the price cap framework for U S West's high capacity services.

In its comments, SBC characterizes U S West as the "underdog" in the local telecommunications market because it is forced to compete with giant national (and international) carriers such as AT&T and MCI WorldCom. According to SBC, U S West does not enjoy an advantage in terms of its costs, structure, size and resources.[4] Indeed, SBC asserts that U S West is at a severe disadvantage because "CLECs nationwide have had no difficulty attracting large amounts of capital as evidenced by the over $14 billion amassed by CLECs since passage of the 1996 Act."[5]

GSA urges the Commission to find that U S West's relative corporate size is only tangentially relevant to the primary criteria in evaluating the Petition — "What is the company's strength in the market for switched access and dedicated transport services in the Seattle area?" In its Comments, GSA acknowledged that the market study by U S West demonstrates that the Seattle high capacity market is one of the most competitive in the company's 14–state service area.[6] However, as MCI

3 Opposition of MCI WorldCom, pp. 6–19; Opposition of Sprint, pp. 6–12; Opposition of TRA, pp. 1–10; Opposition of AT&T, pp. 5–12; and Opposition of CTA, pp. 4–9.

4 Comments of SBC, p. 2.

5 *Id.*

6 Comments of GSA, p. 4.

WorldCom explains in its comments, the market share data presented by U S West must be considered in context.[7]

U S West states that it has only a 20 percent share of the "retail" market, with the remaining 80 percent provided by interexchange carriers ("IXCs") or competitive access providers ("CAPs").[8] However, comments by other carrier parties show that the great majority of the 80 percent market share that U S West attributes to "competitors" consists of U S West circuits that end users have ordered from the IXCs, rather than directly from U S West.[9]

TRA, the association of telecommunications resellers, observes that it is difficult to quantify U S West's market share because the carrier has provided very little basic data.[10] However, using the best available data, TRA estimates that U S West still controls 80 percent of the market and its competitors 20 percent, rather than the reverse.[11] Moreover, TRA explains that its 80 percent estimate for U S West probably understates that company's' share of the Seattle market because the only available data is expressed in DS–1 "equivalent" circuits.[12] In U S West's analysis, 28 DS–1 circuits are considered equal to one DS-3 circuit, but under the existing rate structures, 28 individual DS–1 circuits would produce much more revenue than a single DS–3. Since the DS–3 market is more competitive than the DS-1 market, the use of

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7 Opposition of MCI WorldCom, p. 15.

8 U S West Petition, pp. 3–4.

9 *Id.*, p. 16.

10 Opposition of TRA, p. 5, n. 13.

11 *Id.*, p. 4.

12 *Id.*, p. 5.

"equivalent" circuits overstates the competitors' market share asserted in U S West's Petition.[13]

Moreover, MCI WorldCom observes in its comments that throughout the nation most special access circuits are ordered from IXCs, rather than the incumbent LEC, because end users look to the IXC for end-to-end transmission capability.[14] Therefore, the fact that end users order most circuits from IXCs does not demonstrate a decline in U S West's market power. Indeed, following U S West's logic, the company had in fact "lost" most of the "retail" market for high capacity services even before a single competing network was constructed in the Seattle MSA.[15]

B. The existing price cap framework does not limit the company's ability to set prices to respond to competition.

In supporting U S West's Petition, SBC asserts that there is need for pricing flexibility "relief" in the Seattle MSA.[16] SBC claims that users of high capacity services are "acutely sensitive to price and service accommodations."[17] Also, SBC observes that the Telecommunications Act of 1996 recognizes potential needs for forbearance on a "service" or "geographic area" basis.[18]

Contrary to SBC's claims, however, additional pricing flexibility is not necessary to accommodate U S West's customers. As Sprint explains in its comments, the regulatory framework for U S West and other price cap carriers now permits special

13 *Id.*

14 Opposition of MCI WorldCom , p. 16.

15 *Id.*, p. 16.

16 Comments of SBC, pp. 2-3.

17 *Id.*, p. 2.

18 *Id.*, p. 3.

access rate reductions to meet competition on a geographically disaggregated basis.[19]

The present price cap rules permit LECs to establish a reasonable number of "density pricing zones" within each study area for pricing special access services.[20] Price cap LECs may charge different rates for special access and switched transport services in the respective zones.[21] Thus, as Sprint explains, U S West can reduce its prices for high capacity services throughout the pricing zone containing the Seattle MSA if the company needs to compete more vigorously in that area.[22]

Moreover, as Sprint also explains, U S West can respond to competition by offering term and volume discounts on its high capacity services.[23] The Commission's rules permit all incumbent LECs to employ term and volume discounts if they are cost–based and do not result in cross–subsidies from other services.[24] Since U S West owns and controls the great majority of installed revenue–producing high capacity facilities in the Seattle area, as explained above, the company should now be able to offer cost–based discount plans that are difficult for its competitors to match.

III. RELAXATION OF TARIFF FILING REQUIREMENTS WILL PROVIDE MORE OPPORTUNITIES FOR COMPETITION TO DEVELOP.

Although additional pricing flexibility is not required, GSA explained in its Comments that the Commission should grant U S West's requests with respect to tariff

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19 Opposition of Sprint, p. 13.

20 Rule 69.123(a).

21 Rule 69.123(e)(2).

22 Opposition of Sprint, p. 13.

23 *Id.*, p. 14.

24 *Id.*

filing rules and rate averaging.[25] None of the parties submitting comments directly addressed these aspects of U S West's Petition, but GSA is convinced that these proposals will provide many important benefits.

Increased flexibility for filing tariffs and deaveraging rates will increase the overall level of competition, reduce prices, and provide additional benefits to end users.[26] Forbearance from unnecessary tariffing and averaging requirements is particularly important to end users because these steps will help U S West to participate in competitive bidding opportunities.

As GSA noted, increased flexibility for U S West to participate in competitive bidding for telecommunications services has many advantages.[27] From the user's standpoint, a wider response to requests for proposals will lead to lower prices and more service options. From the company's standpoint, the ability to participate in competitive bidding procedures will provide more opportunities for serving larger business users. Indeed, contracts benefit all ratepayers, because any services provided at prices above incremental costs make a contribution to the company's common facilities costs and overheads.

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25 Comments of GSA, pp. 6–8.

26 *Id.*, p. 8.

27 *Id.*

IV. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

Respectfully submitted,

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March 11, 1999

CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 11th day of March, 1999, by hand delivery or postage paid to the following parties.

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